

BEFORE THE STATE ETHICS COMMISSION

STATE OF GEORGIA

IN THE MATTER OF

Citizens for a Better Georgia, and

Georgia Trial Lawyers Association

*
*
*
*
*

CASE NO.

2004-0048

2005-0086

CONSENT ORDER

Citizens for a Better Georgia ("CFBG") comes before the State Ethics Commission pursuant to a sworn, written complaint filed by Robert J. Shaw on July 14, 2004, naming CFBG and Lauren "Bubba" McDonald as Respondents.

Following a preliminary hearing on February 25, 2005, the Commission dismissed Lauren "Bubba" McDonald as a named Respondent, and the Commission found reasonable grounds to believe that CFBG had violated the Ethics in Government Act, and CFBG was set down for an Administrative Procedure Act hearing.

At a meeting held July 29, 2005, the State Ethics Commission found probable cause to open an investigation of Georgia Trial Lawyers Association ("GTLA"), and a preliminary hearing scheduled for GTLA on September 21, 2005, was waived by counsel for GTLA.

Now prior to a consolidated Administrative Procedure Act hearing in this matter, the State Ethics Commission and the Respondents agree to consent to the following terms to resolve the pending case by Consent Order.

Origins of Citizens for a Better Georgia

As the Public and Political Affairs Director of GTLA, Bill Clark advises members "on how to engage in politics effectively and in compliance with Georgia law."

In the spring of 2004, Bill Clark contacted McKenna Long & Aldridge for legal advice concerning the methods for contributing to candidates and otherwise having an impact on legislative races.

By letter dated June 21, 2004, James Washburn of McKenna Long & Aldridge issued an opinion letter to GTLA relating to Georgia campaign finance issues.

On or about July 1, 2004, a group of members of GTLA filed a registration of an entity called "Citizens for a Better Georgia" on a "Registration Form for a Committee Other Than Candidate."

Relationship of GTLA and CFBG

In the course of the Commission's review of these matters, Bill Clark advised the Commission it was his understanding following the formation of CFBG, that McKenna Long & Aldridge has continued to advise CFBG. His understanding derived from the fact that he acted as and was treated as agent for CFBG by McKenna Long throughout the existence of CFBG as evidenced by various statements for Professional

Services from McKenna Long to GTLA for advising on and discussing matters with Bill Clark concerning CFBG, such as a complaint against CFBG filed with the State Ethics Commission, McKenna Long's filing of a response to the ethics complaint on behalf of CFBG, and McKenna Long's telephone conferences with Bill Clark concerning the pending ethics complaint against CFBG.

Both the affairs and finances of GTLA and CFBG were intermixed to the point that although statements for legal services were issued to the GTLA, CFBG paid those expenses, including all charges for the three months prior to the formal inception of CFBG.

During the pendency of enforcement proceedings the Commission staff posed questions concerning payments for legal services provided by McKenna Long & Aldridge, and specifically concerning which entity paid for which services. Reviews by the bookkeepers of both GTLA and CFBG showed that GTLA had paid for none of the services provided in April, May, or June of 2004 (although McKenna Long invoices for Professional Services Rendered were issued to GTLA), and that all such charges had been paid by CFBG. Bill Clark of GTLA has stated that such charges should have been paid by GTLA rather than CFBG, and subsequently GTLA reimbursed CFBG for such payments on June 30, 2005.

Legal Issues and Relevant Provisions of Law

In 2004 non-candidate campaign committees and independent committees were required to file a registration with the Secretary of State prior to accepting or making contributions or expenditures, and they were required to file periodic Campaign Contribution Disclosure Reports. O.C.G.A. § 21-5-34(c). Independent committees were required to list on their disclosure reports the name of the candidate or candidates on behalf of whom or in support of or in opposition to whom an expenditure or provision of goods or services that was made. O.C.G.A. § 21-5-34(f)(2)(B).

All contributions and expenditures of an independent committee are required to be disclosed pursuant to O.C.G.A. § 21-5-34(f).

Anything of value which is received by, provided to, furnished to, or conveyed to on or behalf of a candidate or a campaign committee is required to be reported on the Campaign Contribution Disclosure Report for the time period in which the thing of value is provided. Commission Rule 189-3-.03.

Within the two-week period prior to the date of any election which an independent committee is seeking to affect, contributions accepted or expenditures made which exceed \$1,000.00 must be reported within 48 hours of such activity. O.C.G.A. § 21-5-34(f).

In 2004, independent committees were required to file their Campaign Contribution Disclosure Reports electronically once they either raised or spent \$5,000.000 in the calendar year. O.C.G.A. § 21-5-34.1(d).

Pursuant to O.C.G.A. § 21-5-34(f)(2)(D), independent committees must list on their Campaign Contribution Disclosure Reports the corporate, labor union, or other affiliation of any political action committee, candidate, campaign committee, or independent committee making a contribution of the value of \$101.00 or more.

Findings and Conclusions

Although CFBG registered as an "organization or person other than Candidate's Campaign Committee" rather than as an "Independent Committee," the Commission concludes that, consistent with CFBG's subsequent filing of Campaign Contribution Disclosure Reports as an independent committee, the

registration designation resulted from CFBG's use of an out-of-date form and the registration is deemed to be timely and in substantial compliance with the law.

By failing on Campaign Contribution Disclosure Reports to name the candidate or candidates in support of whom or in opposition to whom expenditures were made, CFBG violated the requirement to do so on each of the reports for the periods ending July 6, 2004; July 16, 2004; July 27, 2004; August 1, 2004; September 1, 2004; and October 1, 2004, in violation of O.C.G.A. § 21-5-34.

A series of things of value not contemporaneously paid for were received by CFBG during several reporting periods in 2004, but CFBG failed to make deferred expense disclosures as required by Commission Rule 189-3-.03 in each of the following instances:

- 1) On July 19, 2004, Respondent was billed \$6,715.72 for services provided by McKenna Long & Aldridge.
- 2) On August 30, 2004, Respondent was billed \$2,629.51 for services provided by McKenna Long & Aldridge.
- 3) On September 8, 2004, Respondent was billed \$2,016.00 for services provided by McKenna Long & Aldridge.
- 4) On October 25, 2004, Respondent was billed \$11,159.46 for services provided by The Strategy Group.
- 5) On October 27, 2004, Respondent was billed \$5,484.28 for services provided by The Strategy Group.

The Respondents admit three violations of O.C.G.A. § 21-5-34(f) by failing to report the following activities within 48 hours of occurrence:

- 1) Receipt of a \$20,000.00 contribution on July 7, 2004;
- 2) Expenditure of \$42,000.00 on July 8, 2004;
- 3) Expenditure of \$44,971.35 on July 8, 2004.

The Respondents admit three violations of O.C.G.A. § 21-5-34 by failing to disclose as required acceptance of the following contributions:

- 1) \$1,500.00 contribution received on or about September 20, 2004;
- 2) \$4,000.00 contribution received on or about September 20, 2004;
- 3) \$2,000.00 contribution received on or about September 21, 2004.

CFBG admits failing to timely file a Campaign Contribution Disclosure Report for the period ending December 31, 2004 in violation of O.C.G.A. § 21-5-34.

CFBG admits violating O.C.G.A. § 21-5-34.1 by failing to file Campaign Contribution Disclosure Reports electronically for the periods ending July 6, 2004; July 27, 2004; August 1, 2004; September 1, 2004; October 1, 2004; November 1, 2004, and December 31, 2004. CFBG notes that the Secretary of State's electronic disclosure system in place in 2004 did not permit electronic filing of these reports.

CFBG admits violating O.C.G.A. § 21-5-34 by failing to disclose a series of in-kind contributions from GTLA as follows:

- 1) \$2,816.00 in legal fees through June 7, 2004, paid to McKenna Long & Aldridge;
- 2) \$6,715.72 in legal fees through July 19, 2004, paid to McKenna Long & Aldridge;
- 3) \$2,629.51 in legal fees through August 30, 2004, paid to McKenna Long & Aldridge;
- 4) \$2,016.00 in legal fees through August 31, 2004, paid to McKenna Long & Aldridge.

CFBG admits violating O.C.G.A. § 21-5-34(f)(2)(D) by failing to disclose its affiliation with GTLA.

Sanction and Future Conduct

In setting the amount of civil penalty herein the Commission is mindful that independent committees which make bona fide independent expenditures are not restricted by contribution limits and that, through independent expenditures, it is possible for a single source to spend unlimited sums of money trying to elect or defeat a targeted candidate.

In the absence of limits, it is imperative that the provisions of Georgia law requiring full and timely disclosure of the sources and amounts of funding to independent committees be complied with. In this case the information the public is entitled to by law was not provided before the time of elections involved as lawfully required to inform the public.

GTLA and CFBG acknowledge and admit to the violations of the Ethics in Government Act as hereinabove set forth. These Respondents agree to pay as a consequence of these violations civil penalties in the sum of Ten Thousand Dollars (\$10,000.00) to be apportioned between them in such amounts as they deem appropriate in light of their activities in connection with the 2004 elections.

In addition, the Respondents agree to pay statutory late filing fees in the amount of Six Hundred Dollars (\$600.00) for the reports named herein.

The Commission orders the fulfillment of all requirements of the terms of this order. All sums required to be paid hereunder shall be paid within thirty (30) days of the date of this order.

CFBG agrees to amend all 2004 Campaign Contribution Disclosure Reports to list the names of the candidate or candidates on behalf of whom, in support of whom, or in opposition to whom each expenditure or provision of goods or services was made.

The Commission finds and concludes that by filing amended reports to address the reporting issues raised in this Consent Order and by paying the civil penalties and fees described in this Consent Order, Respondents shall be in substantial compliance with the Ethics and Government Act.

The Respondents acknowledge that the violations admitted herein are sufficient as a matter of law to justify the civil penalties assessed herein.

The Respondents consent to the foregoing findings of fact and they agree to comply with the terms of this order.

The State Ethics Commission adopts the foregoing statements and conclusions as the Commission's findings of fact and conclusions of law. The Commission orders the implementation of the terms of this Consent Order.

The Respondent is ordered to cease and desist from any and all violations of the Ethics in Government Act.

The Respondent represents that the foregoing findings of fact are true, and agrees to the conclusions of law, and further agrees to abide by all terms thereof.

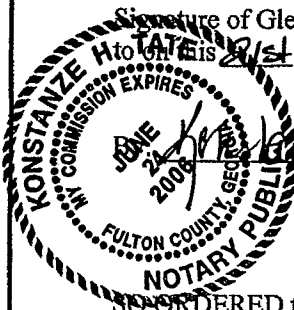


John Mabrey attested
on this 23rd day of February, 2006.

Kelley C. Wade

RESPONDENT

By: [Signature]
Citizens for a Better Georgia



Signature of Glenn Kushel attested
on this 23rd day of February, 2006.

Konstanze H. Tate

RESPONDENT

By: [Signature]
Georgia Trial Lawyers Association

SO ORDERED this 23rd day of February, 2006.

STATE ETHICS COMMISSION

By: [Signature]
Steve Farrow
Chairman